

1-1700-8165-2

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS

L.J.,

Charging Party,

v.

Independent School District No. 621,

Respondent.

FINDINGS OF FACT, CONCLUSIONS OF LAW AND ORDER

The above-entitled matter came on for hearing before Administrative Law Judge George A. Beck at 9:30 a.m. on November 2, 1993 at the Office of Administrative Hearings, 100 Washington Square in the City of Minneapolis, Minnesota. The hearing concluded on the following day. The record remained open through December 10, 1993, when the last written brief was filed.

Herbert P. Lefler, III, Attorney at Law, 701 4th Avenue South, Suite 500, Minneapolis, Minnesota 55415, appeared on behalf of the Charging Party. John O'Donnell, Attorney at Law, of the firm of Knutson, Flynn, Hetland, Deans & Olsen, 1900 Minnesota World Trade Center, St. Paul, Minnesota 55101, appeared on behalf of the Respondent.

Pursuant to Minn. Stat. 363.071, subd. 2, this Order is the final decision in this case. Under Minn. Stat. 363.072, the Commissioner of the Department of Human Rights or any other person aggrieved by this decision, may seek judicial review pursuant to Minn. Stat. 14.63-14.69.

STATEMENT OF THE ISSUE

The issue to be determined in this contested case proceeding is whether or not the Respondent unlawfully discriminated against the Charging Party by discharging her from employment because of a disability, and if so, what relief should be granted.

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

1. L.J. ("Ms. J." or "the Charging Party") was employed by Independent School District No. 621 ("the School District" or "the Respondent") from 1978 through July 31, 1992. Prior to her employment with the School District, Ms. J. attended college for three years and had been employed as a key punch operator. She began her employment with the School District as a key punch operator and then held other positions, including a position involving the school census, and an assistant coordinator position. For the last three years of her employment, she was a coordinator in the School District's Area Learning Center (ALC). The Area Learning Center is an alternative school for at-risk students who have not performed well in a traditional school setting. It accepts students from other school districts in the northern metropolitan area. Approximately 20% of its approximately 250 students are from the Respondent's school district. Its staff includes several tenured teachers who serve as counselors or advisors.

2. Ms. J. was not a licensed teacher with the School District. She was a "non-affiliated" employee of the School District. She was not tenured and had no bumping rights into other positions in the School District. At the time of her discharge, Ms. J.'s annual salary was \$31,810 plus benefits. Ex. A. Her benefits included a PERA retirement contribution, sick leave, 20 days of vacation, and life insurance in the approximate amount of \$60,000. During her employment with the School District, the Charging Party received an annual written evaluation. Her evaluations were always satisfactory or better and she was never reprimanded or disciplined. Ms. J.'s supervisor felt that areas where she could have improved included getting reports done on time, getting transcripts to home school districts on time, and avoiding being curt on the telephone.

3. On January 27, 1992, the school board of the School District adopted a proposed budget for the 1992-93 school year, which made adjustments necessary to address a projected \$2 million general fund deficit. One of the budget assumptions was that the Area Learning Center staff would be restructured, resulting in cost reductions of \$45,000. There were approximately 33 people on the ALC staff. At the same meeting the school board approved the termination of a coordinator position and an assistant coordinator position at the end of the current school year. Neither of these positions were in the ALC. Ex. 2.

4. John Seday organized the ALC in 1988 and was its director until April of 1992. Mr. Seday is a 27-year employee of the school district. He was notified on January 3, 1992 that he would be transferred from the ALC. This notification sparked an effort by the ALC staff to keep Mr. Seday as director. The staff petitioned the superintendent and the school board and attended

school board meetings. The effort included a proposal to organize the ALC as a charter school, however, this effort was not successful. Ms. J. was active in the effort to keep Mr. Seday and in the effort to organize a charter school. Howard Dahl, who was a principal at the Oak Grove School in the District, was advised on January 2, 1992 by the Deputy Superintendent, James Bauch, that he would become a half-time principal at Oak Grove and a half-time principal or director at the ALC. He did not start as director at the ALC until early April of 1992.

5. Budgeting at the School District is done by first determining an average teacher salary, which is known as a full-time equivalent (FTE). A student teacher ratio, e.g., 20-1 is then determined and after ascertaining the approximate number of students, the number of permissible staff is calculated. Non-teacher staff is hired with each position being considered as a percentage of the full-time teacher position. For example, in the 1993-94 school year the average teacher salary was \$40,601 plus benefits with a 12-month clerk having a ratio of 0.671 to the full-time teacher position. Ex. B. In January of 1992 the School District budget director, Carl Colmark, told Mr. Dahl that the ratio budgeting system would be applied for the first time to the ALC. Prior to that time the ALC budget was established without consideration of the student-teacher ratio and, traditionally, the ALC had had more staff than the other schools.

6. In January of 1992, the budget director also decided that the keeping of statistics for the Minnesota Automated Reporting System for Students or MARSS would be transferred from the ALC to the School District central office, which performed that function for all of the other schools. This activity was one of Ms. J.'s job duties at ALC. MARSS statistics are the basis for funding decisions by the district and the legislature.

7. During early 1992, Mr. Dahl consulted with Personnel Director Judy Curtis, Mr. Seday, Mr. Colmak and Mr. Bauch about the staffing requirements at the ALC and what restructuring might be required. He felt that after the MARSS job function was transferred to the district office, that Ms. J.'s job duties no longer amounted to a full-time position. He talked to Mr. Seday on June 5, 1992 to try to determine whether other job duties were available which might be included in her position. He had already received approval on May 20, 1992, however, from Mr. Bauch and Ms. Curtis to eliminate Ms. J.'s position. As a part of the restructuring of the ALC for the 1992-93 school year, Mr. Dahl wanted to move two teachers into the math and science resource center within the ALC and then hire a language arts teacher. He was able to accomplish this by eliminating Ms. J.'s position, as well as by a projected increase in enrollment at the ALC. The proposal to discharge Ms. J. originated with Mr. Dahl. He believed this would improve the program by increasing teaching staff and direct student contact.

8. In March or April of 1992, Deputy Superintendent Bauch had two meetings with the ALC staff after it was clear that Mr. Seday would in fact be leaving. The goal of the meetings was to help build morale. Mr. Bauch indicated that the ALC team would remain

together and that there would be no further removals.

9. The Charging Party was first treated for chemical dependency in January of 1989. At that time School District employees, including Mr. Seday and Amanda Little, a chemical dependency counselor with the School District, organized an intervention for Ms. J., which resulted in her entering and completing a 28-day treatment program.

10. In February and March of 1992, Ms. J. was experiencing problems with chemical dependency and voluntarily entered counseling on an out-patient basis, two evenings a week, through United Behavioral Systems. The counseling was not successful, however, in dealing with her problem.

11. In April of 1992, Tim Howard, who is a chemical dependency counselor at the ALC called Amanda Little and said that he suspected that Ms. J. was drinking and that she might be ready to seek treatment. Ms. J. did agree to treatment and Ms. Little proceeded to facilitate her entering treatment by talking to Personnel Director Judy Curtis to check on insurance questions. On May 1, 1992, Ms. J. was admitted to St. Mary's Hospital for assessment and then proceeded to the Dellwood treatment center in Cambridge, Minnesota, where she completed a treatment program on June 10 or 11, 1992. Ms. J. did not talk directly to Ms. Curtis about leaving for treatment. However, she did call Howard Dahl after being assessed at St. Mary's, to advise him that she would be gone for in-patient treatment. Ms. J. authorized Tim Howard at the ALC to explain to other staff members in a private manner that she was in treatment.

12. On approximately June 11, 1992, Ms. J. called Mr. Dahl, advised him that she had completed treatment and that she was ready to return to work on Monday, June 15, 1992. She asked Mr. Dahl if her job was still in place and Mr. Dahl replied that it was. He told her that he would be out of the office at a workshop on June 15th but that he would contact her on Tuesday or Wednesday. Mr. Dahl had, in fact, already determined earlier that Ms. J.'s position was to be terminated. He felt that it would not be appropriate to tell her that while she was in treatment or on the telephone.

13. When Ms. J. reported to work on June 15, 1992 she received a note from Mr. Dahl asking that she meet with him at 11 a.m. at the School District central office. Upon arriving at the central office, she was called into Ms. Curtis's office, and Ms. Curtis and Mr. Dahl told her that her position was being terminated on July 31, 1992 as a part of the restructuring of the ALC. During the meeting, Ms. Curtis asked Ms. J. whether she had thought about leaving on a disability basis, however, Ms. J. did not understand this reference and it was not pursued. Neither Ms. Curtis nor Mr. Dahl suggested that Ms. J. apply for any other positions at the ALC. Ms. J. was allowed time off during June and July of 1992 in order to look for other employment.

14. The School District did post three new positions in the ALC to be filled during the 1992-93 school year. The first was a

class 1 secretary which was posted June 18, 1992 and required excellent secretarial skills, familiarity with the Macintosh system, good keyboarding skills, and ability to work with a variety of people. Ex. D. The second was a 7-hour-per-day clerical/health paraprofessional, which required reliable transportation, a valid driver's license and health related experience or training. Ex. E. The last was a 7-hour-per-day clerical/bookkeeper/health paraprofessional, which required reliable transportation, a valid driver's license and health related experience or training. This position was posted July 23, 1992. Ex. F. All of the positions paid less than Ms. J.'s position. Ms. J. did not apply for any those positions.

15. The School District did hire three new employees for the ALC during 1992. Tim Ackerman, is a paraprofessional who assists with instruction during the evening. Etty Deveau-Forman is a secretary hired in August of 1992 who performs duties previously done by Michelle Day, including scheduling and daily attendance sheets. Ms. Deveau-Forman also does some duties previously done by Ms. J., such as getting information from other school districts. Linda Nastrom, was hired in August or September of 1992 and part of her job is to order records from other schools, which was a job duty formerly performed by Ms. J.. Other job duties which Ms. J. performed were distributed to other staff members. For example, transcripts are now handled by the individual advisors or counselors. The informational meetings for parents and students are handled by another staff member, Vicki Sarris. Student registration and liaison to school districts are handled by the counselors or, in the case of a request for records, by clerical personnel. Mr. Dahl and the head secretary also assumed some of Ms. J.'s former duties such as purchasing and bookkeeping. Had Ms. J. not been terminated, it's likely that the ALC would have had to hire some extra help, but perhaps not as much. Mr. Dahl's goal was to have two people in the front office where Michelle Day was leaving.

16. The job description for the position held by Ms. J. was developed in 1988 and indicates that her duties are as follows:

1. Responsible for managing the registration and record-keeping of students in the Area Learning Center. Students include district residents and non-residents.
2. Provide information regarding the Area Learning Center (ALC) to individuals and groups -- personally, by phone, mail; on-site presentations to other districts.
3. Interview prospective ALC students, both district residents and non-resident students, and assess educational records to assure that they meet placement criteria.
4. Assess transcripts and determine grade placement and/or graduation credit status of potential students of the ALC, as well as all secondary non-residents applying under enrollment options.
5. Design the preliminary learning plan for ALC

enrollees; refer each student to a teacher-advisor.

6. Coordinate the maintenance of student accounting and financial records for the ALC, including attendance, grades, credits, graduation files, etc.

7. Coordinate ALC operations, including supervision of clerical functions, staff attendance records, purchasing and facilities.

8. Participate in staff meetings and appropriate training sessions for the ALC.

9. Maintain a flexible schedule, established by supervisor, which facilitates student intake for both day and evening sessions of the ALC.

10. Be knowledgeable about the purposes and activities of the ALC in order to assist staff.

11. Plan for, prepare and submit periodic reports necessary to evaluate the effectiveness of the ALC, its processes and procedures.

12. Supervise all non-teaching staff of the ALC.

13. Manage the transportation needs of the ALC and vocational education; schedule van usage and maintenance.

14. Other duties as assigned by supervisor.

(Ex. 5) Items No. 1, 3, 4, 6 and 11 above relate to some extent to the MARSS job function. Ms. J. also was involved in coordinating and supervising independent study for students.

17. Ms. J. normally worked at least 50 hours per week. Approximately half of her working time was spent as liaison to the students' home school districts to advise them of the student's progress. She spent approximately one hour of a typical day and approximately one month at the end of the school year compiling statistics for MARSS. She also spent seven hours per week preparing for, conducting, and doing follow-up for public informational meetings to explain the ALC program. She would contact potential students subsequent to the meetings. Approximately 10 percent of her time was involved in managing the physical plant of the ALC, including security, and some purchasing. She was also responsible for some personnel functions such as reporting sick leave and vacation to the district office and arranging substitute teachers when necessary in order to keep a minimum staff.

18. Although some tenured staff were proposed to be laid off in the spring of 1992, all were subsequently rehired in the fall, and Ms. J. was the only position that was eliminated. In January of 1992, the salaries at the ALC amounted to \$692,884.80. Ex. 3. In September of 1992, the salaries charged to the ALC amounted to \$872,682.80. Ex. 4. The change in budget numbers is attributable at least in part to the change to budgeting by

teacher-student ratio and to an increase in student enrollment.

19. The School District's policy on chemical use/abuse intervention recognizes that chemical dependency is a treatable illness. It provides that employees diagnosed as chemically dependent by a health professional will receive the same considerations and benefits provided in established benefit plans and programs for other types of illness. Employees are encouraged and assisted to seek and accept diagnosis and treatment at the earliest possible time. Ex. C. In the past 15 years, approximately 15-20 school district employees have received treatment for chemical dependency. The District has cooperated in sending employees to treatment and has not, on a prior occasion, terminated an employee after completion of treatment.

20. Ms. J. has not been employed since she was terminated by the school district. Upon leaving the School District, Ms. J. applied for and received unemployment compensation benefits, followed by emergency extended unemployment compensation benefits. While she was receiving unemployment benefits, she pursued jobs in the areas of secretarial, data entry, and as a facilitator of non-profit organizations. She was interested in finding a position as office manager or in-take coordinator at a minimum salary of \$28,000 per year. She generally got job leads from the newspaper or from City or School District postings, and visited approximately seven or eight school districts in the north suburbs. She did not find any openings at her salary level in the school districts. While she was on unemployment, Ms. J. had a job interview approximately once a week, however, she was not offered a position. The Charging Party has been a full-time student at Metropolitan State University since June of 1993. She expects to graduate in June of 1994 with a degree in counselling.

21. Since leaving the school district, Ms. J. has been involved in a therapy program through United Behavioral Systems. For the first four to six months after leaving the School District, the therapy program consisted of after-care for one hour per week, a group therapy session at two hours per week, and a visit to a psychiatric nurse once every four to six weeks to check the medication which the Charging Party is taking for depression. Subsequent to that time the Charging Party has had a therapy session with a licensed social worker once every two weeks, attended a women's support group 1 hour each week and visited a psychiatrist or psychiatric nurse every four to six weeks to check on the medication.

22. Among the issues which Ms. J. is dealing with in therapy are the grief and loss associated with the loss of her job as well as the loss of her father who passed away in September of 1992. Ms. J. is also dealing with the issues of alcohol dependency and depression, including suicidal ideation. Her history includes suicide attempts when she was in her 20's.

Based upon the foregoing Findings of Fact, the Administrative Law Judge makes the following:

#### CONCLUSIONS OF LAW

1. The Administrative Law Judge has jurisdiction in this matter pursuant to Minn. Stat. 14.50 and 363.071.
2. That the Notice of the hearing in this matter was proper and fulfilled all relevant substantive and procedural requirements of law or rule.
3. That the Minnesota Human Rights Act provides that it is an unfair employment practice for an employer to discharge an employee because of a disability. Minn. Stat. 363.03, subd. 1(2)(b).
4. A disability is defined in the Human Rights Act as:

Any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment.
5. That the Charging Party has a physical impairment which materially limits one or more major life activities in that she is a chemically dependent person.
6. That the Charging Party has therefore been shown to be disabled within the meaning of the above definition.
7. That the Charging Party has proved a prima facie case of discrimination on the grounds of disability.
8. That the Respondent has advanced legitimate non-discriminatory reasons for terminating the Charging Party.
9. That the Charging Party has failed to prove by a preponderance of the evidence that the reasons advanced by the Respondent are mere pretexts.
10. That the Charging Party has failed to prove by a preponderance of the evidence that the Respondent discriminated against her on the grounds of disability when it discharged her from her position.
11. That neither party should be awarded attorneys fees.
12. That the reasons for the above conclusions of law are set out in the Memorandum which follows and which is incorporated into these Conclusions of Law by reference.
13. Any Finding of Fact which is more appropriately classified as a Conclusion of Law is hereby adopted as such.

Pursuant to the foregoing Conclusions of Law, the Administrative Law Judge makes the following:

ORDER

IT IS HEREBY ORDERED: that this matter is dismissed with prejudice.

Dated this 29th day of December, 1993.

/s/ George A. Beck

GEORGE A. BECK  
Administrative Law Judge

Reported: Tape recorded. No transcript prepared.

MEMORANDUM

The Minnesota Human Rights Act provides that it is an unfair discriminatory practice for an employer to discharge an employee because of a disability. In this case the Charging Party contends that she was terminated from her position in the School District with the Area Learning Center because of her disability, namely chemical dependency.

Cases brought under the Minnesota Human Rights are adjudicated by application of a three-party analysis first set out in McDonnell-Douglas Corp. v. Green, 411 U.S. 792 (1973). This three-part analysis has been adopted by the Minnesota Supreme Court. Danz v. Jones, 263 N.W.2d 395 (Minn. 1978); Sigurdson v. Isanti County, 386 N.W.2d 715, 719-20 (Minn. 1986). The McDonnell-Douglas analysis consists of a prima facie case, an answer by the Respondent and a rebuttal. First, the Complainant must present a prima facie case of discrimination by a preponderance of the evidence. Sigurdson, supra 386 N.W.2d at 720. The specific elements of a prima facie case are modified to fit varying factual patterns. Hubbard v. United Press International, 330 N.W.2d 428, 442 (Minn. 1983).

In the case of disability discrimination involving termination from employment, a prima facie case is established by showing that (1) the Charging Party is disabled within the meaning of Minn. Stat. V XEG WKDW WKH &KDUJLQJ 3DUW\ ZDV qualified for the job from which she was discharged; (3) that she was discharged; and (4) that the employer assigned a non-disabled person to do the same work (or the opportunities remained available to others with the charging party's qualification) Miller v. Centennial State Bank, 472 N.W.2d 349, 352 (Minn. Ct. App. 1991). Hubbard, supra, 330 N.W.2d at 442. LaMott v. Apple Valley Health Care Center, 465 N.W.2d 585, 589 (Minn. Ct. App. 1991)

If a prima facie case is established, the Respondent is obligated to present evidence showing a legitimate non-discriminatory reason for its action. Sigurson, supra, 386

N.W.2d at 720. The Respondent's burden is a light one; it need not prove that it was motivated by the reason offered. *Texas Department of Community Affairs v. Burdine*, 450 U.S. 248, 254 (1981). The issue at this stage is whether there is evidence that the Respondent's actions were related to a legitimate business purpose. *Furnco Construction Corp. v. Waters*, 438 U.S. 567, 577 (1978). If the Respondent meets its burden, the third step of the analysis requires the Charging Party to show that the reason offered by the Respondent is actually a pretext for discrimination. However, the Charging Party retains the ultimate burden of persuading the fact finder by a preponderance of the evidence that the Respondent intentionally discriminated against the Charging Party. *Sigurdson*, supra, 386 N.W.2d at 720. In a recent decision the U.S. Supreme Court further interpreted *Burdine* to mean that even if the trier of fact finds the reasons offered by the employer not to be credible, the employee does not automatically prevail. The employee must still satisfy the ultimate burden of persuasion and show that the employer intentionally discriminated against him or her. *St. Mary's Honor Center v. Hicks*, U.S. , 113 S. Ct. 2742, 2753-54 (1993)

The Charging Party has proved a prima facie case of discrimination. It is uncontested that the Charging Party is chemically dependent. Although there is no Minnesota case law concluding that a chemically dependent person is disabled, federal case law indicates that alcoholism is a handicapping condition under 501 of the Rehabilitation Act. *Anderson v. University of Wisconsin*, 665 F.Supp. 1372 (W.D. Wis. 1987) affirmed 841 F.2d. 737 (7th Cir. 1988); *Simpson v. Reynolds Metal Co.*, 629 F.2d. 1226, 1231, 23 F.E.P. 868 (7th Cir. 1980). The Rehabilitation Act definition of handicapped is similar to the Minnesota definition of disability. and has been found to be relevant to disability determinations under the Minnesota statute. *Bauer v. Republic Airlines*, 442 N.W.2d. 818, 820 (Minn. Ct. App. 1989) rev. den. (Minn. 1989) It seems clear based upon this record that the Charging Party's alcoholism, which has necessitated two lengthy absences from work, is a physical impairment which limits a major life activity. The School District did not argue that alcoholism was not a disability under the Minnesota Human Rights Act.

The record also demonstrates that the Charging Party has satisfied the second element of a prima facie case, namely, that she has shown that she was qualified for the job from which she was discharged. The record indicates that the Charging Party received satisfactory or better evaluations and was never reprimanded or disciplined. She had been employed by the School District for approximately 13 years. She had held the position of intake coordinator, a responsible position in the Area Learning Center, for three years. Although the School District pointed out that her supervisor felt that there were some areas in which her job performance could improve, the School District did not argue that Ms. J. was not qualified for her position. Ms. J. was of course discharged from her position, which satisfies the third element of a prima facie case. The fourth element of a prima facie case is that the employer assigned a non-disabled person to do the same work or the job opportunity

remained available to others. The case law does not always require proof of the fourth element in order to establish a prima facie case. In this case, a number of job duties performed by Ms. J. was reassigned to several other employees. There is no indication that any of these employees were chemically dependent. The redistribution of Ms. J.'s job duties is tantamount to the job opportunities remaining available to others. Accordingly, the Charging Party has proved the elements of a prima facie case which then requires the Respondent to present evidence showing a legitimate non-discriminatory reason for its action.

It is particularly appropriate in this case to conclude that a prima facie case was proved because the Charging Party was discharged during a leave of absence related to her disability. While this does not prove discrimination, it is a factor indicating that the employment action ought to be closely scrutinized. It should of course be possible for an employee to take a leave of absence related to disability without adverse employment action. Some companies in fact maintain a policy of guaranteeing employees on disability leave a job when they return, but with the exception of a reduction in force which occurs when the employee is on leave. *Bari v. Control Data Corp.*, 439 N.W.2d 44, 45 (Minn. Ct. App. 1989) rev. den. (Minn. 1989)

The primary reason advanced by the School District for terminating Ms. J. is that it made a management decision to eliminate her position. Mr. Dahl, the director of the ALC determined that two teachers should be moved into the math and science resource center which then required hiring a language arts teacher. In order to permit this to be done, Mr. Dahl eliminated Ms. J.'s position which was a 1.0 full-time equivalent non-teacher position. He testified that he would not have been able to add a language arts teacher and keep Ms. J. Ms. J.'s position was vulnerable in part due to the loss of the MARSS job function which she had performed. Although Mr. Dahl may have over-

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1. In fact, alcoholism was determined not to be a protected disability under pre-1983 law. The definition of disability was amended in 1983. *Khalifa v. Gruys Johnson and Associates*, 407 N.W.2d 733 (Minn. Ct. App. 1987) *Gruening v. Pinotti*, 392 N.W.2d 670 (Minn. Ct. App. 1986). estimated somewhat the amount of time Ms. J. spent on MARSS, those duties clearly occupied a significant portion of Ms. J.'s work. (Finding of Fact Nos. 16 and 17) Mr. Dahl believed that the program would be strengthened by transferring resources to instructional positions. The ALC was also under a mandate from the school board to reduce its budget by \$45,000 and to restructure its staff. However, the reorganization which eliminated Ms. J.'s job was initiated at the ALC by Mr. Dahl. The reason presented by the School District constitutes a

legitimate non-discriminatory reason for terminating Ms. J. and is based upon credible testimony by Mr. Dahl. The reason constitutes evidence that the Respondent's actions were related to a legitimate business purpose.

The Respondent having demonstrated a legitimate non-discriminatory reason for the discharge, the Charging Party is then required to show that the reasons offered are actually a pretext for discrimination. The Charging Party may sustain her burden either directly by persuading the decisionmaker that a discriminatory reason more likely motivated the employer or indirectly by showing the employer's proffered explanation is unworthy of credence. *Miller, supra*, 472 N.W.2d at 354; *Sigurdson; supra*, 386 N.W.2d at 720. The Hicks case, *supra*, which has not been explicitly adopted by the Minnesota Supreme Court, indicates that an employee cannot prevail simply by convincing the decisionmaker that the employer's reasons are not credible, but that the employee must proceed to show that the employer intentionally discriminated against her. This holding may already be implicit in *Sigurdson*.

The Charging Party points to a number of factors in an attempt to demonstrate pretext. She points out that prior to her disability leave, the staff at ALC was advised that there would be no further removals after Mr. Seday left. She notes out that she was the only employee terminated and that decision was made while she was on disability leave. However, it appears as though the assurances given to the ALC staff about further removals were made by the Deputy Superintendent in order to build morale and were made prior to Mr. Dahl's analysis of how the ALC should be restructured. That the Charging Party was the only employee terminated is explained by Mr. Dahl's decision to hire a full-time teacher which would require elimination of an equivalent position, and by the loss of the portion of Ms. J.'s job duties to the School District's central office. The Charging Party also points out that even though the ALC was charged with a reduction of \$45,000 in its budget, the final budget for the year ended up being \$120,000 more than the prior budget. She suggests that this indicates that there was no real need to eliminate her position. It is difficult to compare the budget for 1991-92 with the budget for 1992-93 because the latter budget was set for the first time with a student-teacher ratio budgeting system, which had not been used in 1991-92. Additionally, the budget was higher because of a projected increase in the number of students in the ALC, a projection which was made after January of 1992. At any rate, the School District does not maintain that Ms. J.'s position was eliminated solely to save money. Its explanation is that it was done to permit the hiring of a full-time language arts teacher.

The Charging Party also points to fact that she was not asked to take any of the new jobs at the ALC posted in June and July of 1992 despite her good work record. However, none of the jobs paid as much as she had been paid in her prior position, nor did she apply for any of these jobs. There is also some indication in the record that some of the areas of improvement cited by her supervisor in her job performance evaluation matched some of the

job duties in the new positions. There was also a suggestion that Ms. J. was so closely identified with the effort to keep the prior director and that this was not a positive factor in her being retained in some capacity by the School District. (Finding of Fact No. 4) The School District of course would not be required to mention any new positions since Ms. J.'s job was not a tenured position. Likewise, the fact that some of her job duties were maintained and performed by a variety of other people does not mean that there was not a valid reason for abolishing her position.

The Charging Party has not demonstrated that the reasons offered by the employer are not worthy of being believed. There is, of course, no direct evidence of discriminatory intent, such as a comment by a School District employee or a manager about the Charging Party's chemical dependency. There's no indication that the Charging Party's disability was a problem in her job performance so as to provide the employer with a reason to terminate her. There also is no indication that the School District has any past pattern of discrimination in regard to chemically dependent persons. This is also not a case where the School District had no policy concerning chemical dependency. To the contrary, School District employees are encouraged and assisted to seek and accept treatment for chemical dependency. The record indicates that employees diagnosed as chemically dependent receive the same benefits provided for other types of illness. Approximately 15-20 School District employees have received treatment for chemical dependency in the past 15 years and there has not been a prior occasion of an employee terminated after completion of treatment. (Finding of Fact No. 19) The Charging Party has essentially argued that the circumstances are so suspicious that discrimination must be the explanation. It is not surprising that the Charging Party came to that conclusion due to the sequence of events, however, more is required by the case law. Despite the opportunity for a close scrutiny of the employer's actions through discovery and at hearing, the Charging Party has been unable to find evidence which would show that the School District's restructuring explanation was unbelievable or that it was merely a pretext for removing her because of her disability. Each of the circumstances raised by the Charging Party has been reasonably explained by the Respondent. It has not been demonstrated that a discriminatory reason more likely motivated the employer than the reasons that the School District has offered. Accordingly, this matter must be dismissed.

The School District argued in its post-hearing memorandum that it should be awarded attorneys fees under Minn. Stat. 363.14, subd. 3. That statute specifically applies to actions in district court. In any event, given the facts of this case, an award of attorney fees would not be appropriate.

G.A.B.